

DRAFT

ENVIRONMENTAL ASSESSMENT

CHECKLIST

Elk Island Wildlife Management Area Land Trade

5/17/23



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I. Compliance with the Montana Environmental Policy Act

Before a proposed *project* may be approved, environmental review must be conducted to identify and consider potential impacts of the proposed project on the human and physical environment affected by the project. The Montana Environmental Policy Act (MEPA) and its implementing rules and regulations require different levels of environmental review, depending on the proposed project, significance of potential impacts, and the review timeline. § 75-1-201, Montana Code Annotated (“MCA”), and the Administrative Rules of Montana (“ARM”) 12.2.430, General Requirements of the Environmental Review Process.

FWP must prepare an EA when:

- It is considering a “state-proposed project,” which is defined in § 75-1-220(8)(a) as:
 - (i) a project, program, or activity initiated and directly undertaken by a state agency;
 - (ii) ... a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or
 - (iii) ... a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.
- It is not clear without preparation of an EA whether the proposed project is a major one significantly affecting the quality of the human environment. ARM 12.2.430(3)(a));
- FWP has not otherwise implemented the interdisciplinary analysis and public review purposes listed in ARM 12.2.430(2) (a) and (d) through a similar planning and decision-making process (ARM 12.2.430(3)(b));
- Statutory requirements do not allow sufficient time for the FWP to prepare an EIS (ARM 12.2.430(3)(c));
- The project is not specifically excluded from MEPA review according to § 75-1-220(8)(b) or ARM 12.2.430(5); or
- As an alternative to preparing an EIS, prepare an EA whenever the project is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all the impacts of the proposed project have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance (ARM 12.2.430(4)).

MEPA is procedural; its intent is to ensure that impacts to the environment associated with a proposed project are fully considered and the public is informed of potential impacts resulting from the project.

II. Background and Description of Proposed Project

Name of Project: Elk Island WMA Land Trade

Background and Description of Proposed Project: Under the proposed action FWP would trade 1.07-acres of department-owned land for 2.61 acres of private land adjacent to Elk Island Wildlife Management Area (WMA). The 1.07-acre parcel was purchased in 2008 as part of a larger, approximately 163-acre purchase. The parcel consists of an old farmstead located across the county road from the rest of the 2008 purchase and the WMA. The landowner did not intend to sell this parcel to FWP; however, it had been surveyed with the land to the south of the road in 2007 (COS 27-770, Richland County), prior to FWP’s initial endorsement of the project.

All transactional documents available to FWP field staff and the landowner simply stated a legal description, without any accompanying map, and thus the survey error was not readily apparent in documents available for their review prior to the 2008 purchase:

"Township 20 North, Range 58 East P.M.M, Richland County, Montana. Tract 2 of COS 27-770, in Envelope No 506A, located within Sections 22 and 27, including possible accretion assigned to Lot 9 (Section 22) and Lot 1 (Section 27)"

The 1.07-acre parcel proposed for trade is occupied by a tenant living in a trailer. Both the tenant and the adjacent landowner have been under the incorrect understanding that the property was under private ownership. With current mapping technologies, FWP and the landowner recently became aware of the survey mistake. The landowner maintains they never intended to offer the parcel to FWP in the original sale, and regional staff involved in the transaction (both retired) concurred that it was not included in negotiations. The Land Agent who handled the project is deceased. If FWP does not move forward with the land-trade, the existing tenant would necessarily be evicted from the property, the trailer would be removed from the parcel, and the former landowner would be prevented from renting the site. Further, FWP could incur significant clean-up costs for the site.

Given that all available parties involved in the original transaction agree that the 1.07-acre parcel was not intended to be included in the 2008 purchase, the landowner requested that FWP explore the possibility of correcting this mistake. The landowner offered to trade a 60-foot wide, approximately 2.69-acre piece of land which contains some excellent winter cover for upland game birds and white-tailed deer, that is adjacent to the WMA. Acquisition of this piece would enhance the habitat value of the adjacent WMA for wildlife and provide increased hunting opportunity. The proposed acquisition is immediately adjacent to the WMA, whereas the proposed disposition is across county roads from the WMA. The proposed acquisition would alleviate a trespass issue, as it is tempting for hunters and bird dogs to venture into woody cover immediately adjacent to the WMA.

An isolated 1.07-acre piece of land could also create significant trespass issues, and the parcel offers little habitat or hunting value given its small size and that it is bounded by county roads to the south and west, and farm fields to the north and east. Therefore, this project represents an opportunity to fix a mistake to the satisfaction and benefit of the landowner, to maintain a long-standing positive relationship with the neighboring landowner, and to enhance the WMA with a piece of land that is immediately adjacent and offers better habitat value and hunting opportunity.

Anticipated schedule: Following MEPA review, the project would need to be approved by the Fish & Wildlife Commission (Commission). FWP intends to bring the proposed action before the Commission for approval on 8/17/2023. The land trade would occur as quickly as possible after Commission approval.

Affected Area / Location of Proposed Project:

- Legal Descriptions (pending recording of surveys)

Proposed acquisition:

TRACT A of Survey to be recorded

A Tract of land situate in the SW1/4NE1/4 and Government Lot 3, Section 22, Township 20 North, Range 58 East of the Principal Meridian Montana; Richland County, Montana; being more particularly described as follows:

Beginning at a Point being the Center Quarter Corner for said Section 22; thence along the north-south Midsection line for said Section 22 N00°03'13"W, 60.00 feet; thence S89°55'03"E, 1885.79 feet to the Mean Low Water on the Left Bank of the Yellowstone River; thence along a Meander of said Mean Low Water S21°35'11"E, 64.49 feet to the east-west Midsection line for said Section 22; thence S89°55'03"W, 1909.46 feet; to the Point of Beginning; containing 2.61 acres, more or less.

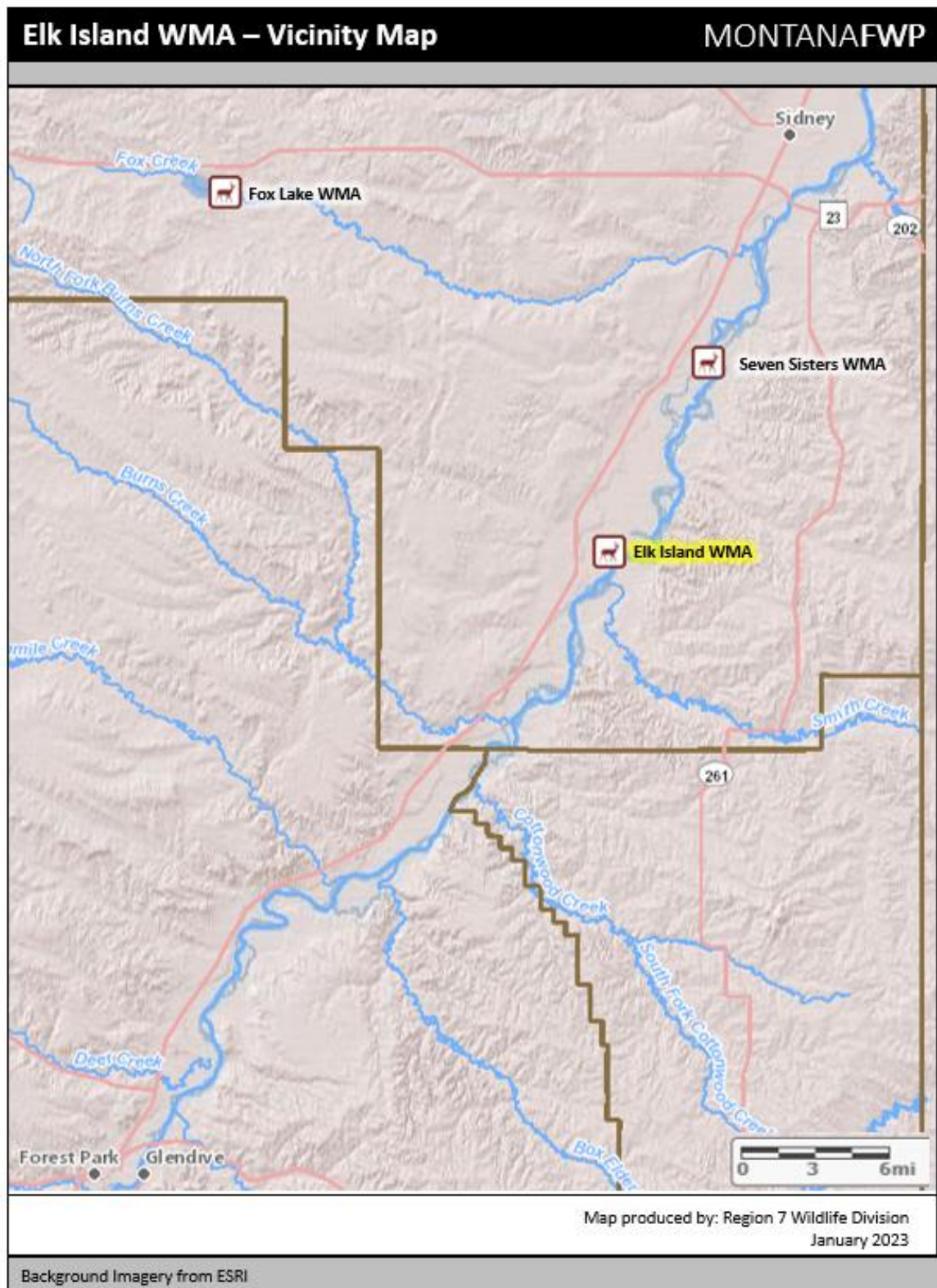
Proposed disposition:

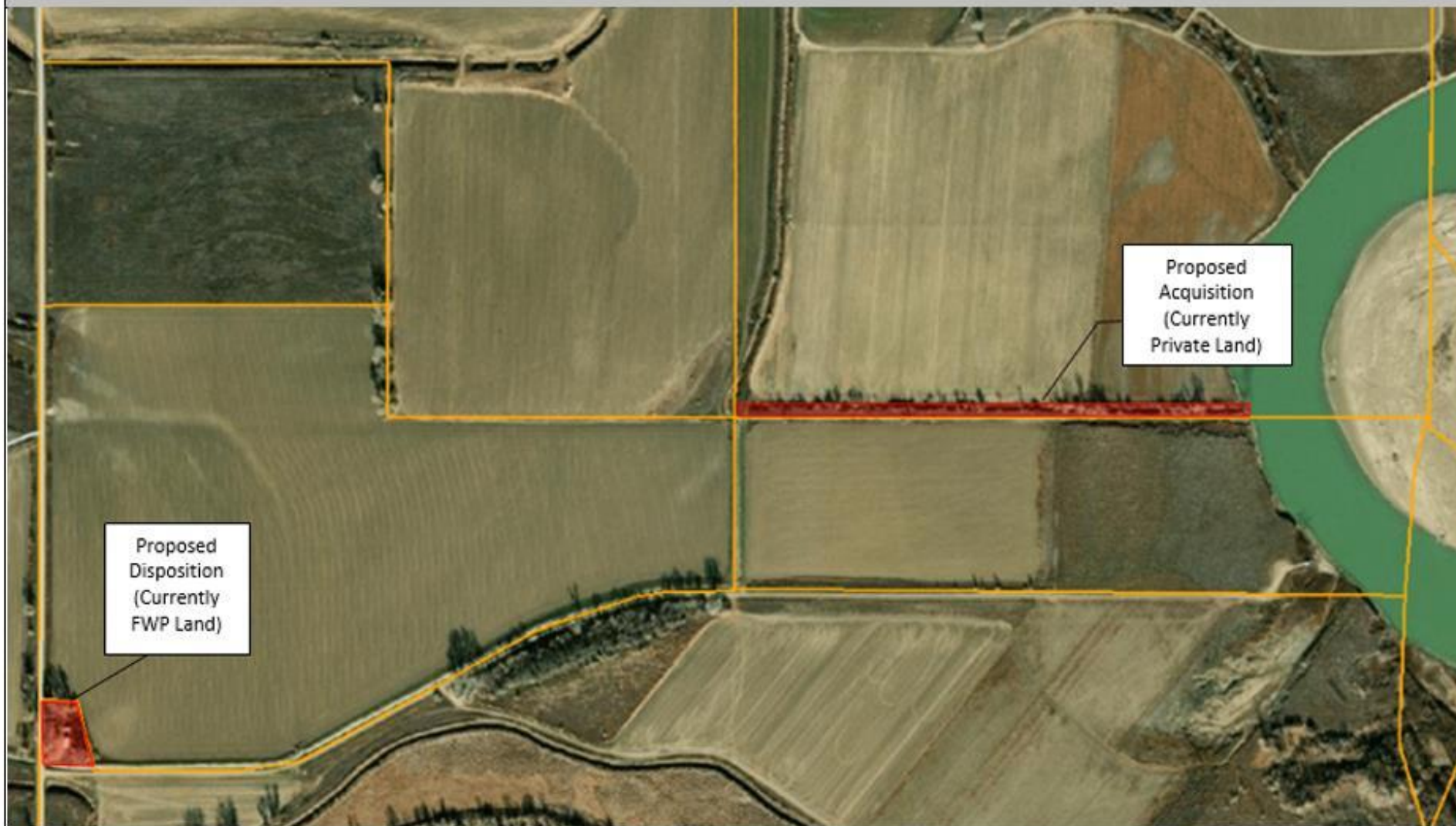
TRACT A of Survey to be recorded

A Tract of land situate in the NW1/4SW1/4 and Government Lot 5, Section 22, Township 20 North, Range 58 East of the Principal Meridian Montana; being a portion of Tract 2, Certificate of Survey No. 27-770; Richland County, Montana; being more particularly described as follows:

Beginning at a Point being the one-sixteenth (1/16) Corner for Section 21 and said Section 22; thence along the west line of said Section 22 N00°01'34"E, 253.40 feet; thence N89°55'03"E, 144.88 feet; thence S14°28'33"E, 276.66 feet; thence N86°11'17"W, 214.63 feet; to the Point of Beginning; containing 1.07 acres, more or less

- Location Map: Elk Island WMA is located near the town of Savage along the Yellowstone River in Richland County, Montana.





Map produced by: Region 7 Wildlife Division
January 2023

III. Purpose and Need

The EA must include a description of the benefits and purpose of the proposed project. ARM 12.2.432(3)(b). Benefits of the proposed project refer to benefits to the resource, public, department, state, and/or other.

Project Purpose and Benefits: FWP is proposing to trade 1.07-acres of department-owned land for 2.61 acres of private land adjacent to the Elk Island WMA. The 1.07-acre parcel was unintentionally acquired by FWP in 2008 as part of a larger, approximately 163-acre purchase. The proposed land trade would rectify an error dating back to the 2007 survey and 2008 WMA addition. The landowner did not intend to sell the 1.07-acre proposed disposition to FWP, and FWP did not intend to purchase it.

Acquisition of the 1.07-acre parcel would result in the following benefits:

- Enhance the habitat value of the WMA for wildlife and provide increased public hunting opportunity.
- Alleviate a potential trespass issue.
- A trailer is located on the affected 1.07-acre parcel of land currently owned by FWP and proposed for trade under the proposed action. If the proposed action is not approved the existing tenant would necessarily be evicted from the property, the trailer would be removed from the parcel, and skirting and other appurtenances on the trailer could be irreparably damaged. Further, FWP could incur significant clean-up costs for the site. Neither the proposed nor the initial action (land acquisition) intended to result in FWP's acquisition of the affected parcel, as this element of the acquisition was unknown to all affected parties at the time of the initial action.
- Opportunity to fix a mistake to the satisfaction and benefit of the landowner and existing tenant, to maintain a long-standing positive relationship with the neighboring landowner, and to enhance the WMA with a piece of land that is immediately adjacent and offers better habitat value and hunting opportunity.

If FWP prepared a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it. ARM 12.2.432(3)(b).

	Yes*	No
Was a cost/benefit analysis prepared for the proposed project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

* If yes, a copy of the cost/benefit analysis prepared for the proposed project is included in Attachment A to this Draft EA

IV. Other Agency Regulatory Responsibilities

FWP must list any federal, state, and/or local agencies that have overlapping or additional jurisdiction, or environmental review responsibility for the proposed project, as well as permits, licenses, and other required authorizations. ARM 12.2.432(3)(c).

A list of other required local, state, and federal approvals, such as permits, certificates, and/or licenses from affected agencies is included in **Table 2** below. **Table 2** provides a summary of state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. Rather, **Table 2** lists the primary state agencies with regulatory responsibilities, the applicable regulation(s) and the purpose of the regulation(s). Agency decision-making is governed by state and federal laws, including statutes, rules, and regulations, that form the legal basis for the conditions the proposed project must meet to

obtain necessary permits, certificates, licenses, or other approvals. Further, these laws set forth the conditions under which each agency could deny the necessary approvals.

Table 2: Federal, State, and/or Local Regulatory Responsibilities

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
Not Applicable		

V. List of Mitigations, Stipulations

Mitigations, stipulations, and other *enforceable* controls required by FWP, or another agency, may be relied upon to limit potential impacts associated with a proposed Project. The table below lists and evaluates enforceable conditions FWP may rely on to limit potential impacts associated with the proposed Project. ARM 12.2.432(3)(g).

Table 3: Listing and Evaluation of Enforceable Mitigations Limiting Impacts

<i>Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.</i>			Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<i>If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below</i>			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Enforceable Control	Responsible Agency	Authority (Rule, Permit, Stipulation, Other)	Effect of Enforceable Control on Proposed Project	

VI. Alternatives Considered

In addition to the proposed Project, and as required by MEPA, FWP analyzes the "No-Action" alternative in this EA. Under the "No-Action" alternative, FWP would not do the proposed project.

A trailer is located on the affected 1.07-acre parcel of land currently owned by FWP and proposed for trade under the proposed action. If the No Action alternative is selected the existing tenant would necessarily be evicted from the property, the trailer would be removed from the parcel, and the landowner would thereby be prevented from renting the site. Further, FWP could incur significant clean-up costs for the site.

No additional impacts to the physical environment or human population in the analysis area would occur under the No Action alternative. The "No Action" alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

	Yes*	No
Were any additional alternatives considered and dismissed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review is included below

VII. Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population

The impacts analysis identifies and evaluates **direct**, **secondary**, and **cumulative impacts**.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the effect.
- **Secondary impacts** “are further impacts to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.” ARM 12.2.429(18).
- **Cumulative impacts** “means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.” ARM 12.2.429(7).

Where impacts are expected to occur, the impact analysis estimates the **extent**, **duration**, **frequency**, and **severity** of the impact. The duration of an impact is quantified as follows:

- **Short-Term:** impacts that would not last longer than the proposed project.
- **Long-Term:** impacts that would remain or occur following the proposed project.

The severity of an impact is measured using the following:

- **No Impact:** there would be no change from current conditions.
- **Negligible:** an adverse or beneficial effect would occur but would be at the lowest levels of detection.
- **Minor:** the effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate:** the effect would be easily identifiable and would change the function or integrity of the resource.
- **Major:** the effect would irretrievably alter the resource.

Some impacts may require mitigation. As defined in ARM 12.2.429, mitigation means:

- Avoiding an impact by not taking a certain action or parts of a project;
- Minimizing impacts by limiting the degree or magnitude of a project and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or
- Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project or the time period thereafter that an impact continues.

A list of any mitigation strategies including, but not limited to, design, enforceable controls or stipulations, or both, as applicable to the proposed project is included in **Section VI** above.

FWP must analyze impacts to the physical and human environment for each alternative considered. The proposed project considered the following alternatives:

- **Alternative 1: No Action. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

Under the “No Action” alternative, the proposed project would not occur. A trailer is located on the affected 1.07-acre parcel of land currently owned by FWP and proposed for trade under the proposed action. If the No Action alternative is selected the existing tenant would necessarily be evicted from the property, the trailer would be removed from the parcel, and the landowner would thereby be prevented from renting the site. Further, FWP could incur significant clean-up costs for the site. The “No Action” alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

- **Alternative 2: Proposed Project. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

See **Table 4** (Impacts on Physical Environment) and **Table 5** (Impacts on Human Population) below.

Table 4 - Potential Impacts of Alternative 2: Proposed Project on the Physical Environment

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Terrestrial, avian, and aquatic life and habitats	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to terrestrial, avian, and aquatic life and habitats would be expected because of the proposed project. The proposed project would trade a 1.07-acre parcel with limited habitat value for a 2.61-acre parcel containing winter cover for upland game birds, white-tailed deer, and other terrestrial and avian species located in the affected area. Therefore, the proposed project would further enhance the intent of the adjacent WMA, which is to protect and preserve wildlife and their habitat. The proposed acquisition would include approximately 60 feet of Yellowstone River frontage, which would be managed similar to existing WMA land to the south, thus no appreciable impacts to aquatic resources would be expected because of the proposed project. Any impacts terrestrial, avian, and aquatic life and habitats from the proposed project would be long-term, beneficial, and negligible.
Water quality, quantity, and distribution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to water quality, quantity, and distribution would be expected because of the proposed project. The proposed project would trade a 1.07-acre parcel for a 2.61-acre parcel. Because no water resources would be required for the proposed project, no impacts to water quality, quantity, and distribution would be expected because of the proposed project.
Geology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to geology would be expected because of the proposed project. The proposed project would trade 1.07-acre parcel for 2.61-acre parcel. The proposed project would not affect any geologic features in the project area; therefore, no impacts to geology would be expected because of the proposed project.

Soil quality, stability, and moisture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to soil quality, stability, and moisture would be expected because of the proposed project. The proposed project would trade a 1.07-acre parcel for a 2.61-acre parcel. No ground disturbance of any kind, such as development of new roads or structures, would occur as a result of the proposed project. The proposed project would not affect any soil features in the project area; therefore, no impacts to soil quality, stability, and moisture would be expected because of the proposed project.
Vegetation cover, quantity, and quality	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would occur because of the proposed project. The proposed land-trade acquisition would replace a 1.07-acre parcel, with a 2.61-acre parcel containing better vegetation cover for wildlife habitat thereby enhancing the habitat value of the adjacent WMA for wildlife. This action would protect better-quality vegetative cover than the proposed disposition. Any impacts from the proposed project would be long-term, beneficial, and negligible.
Aesthetics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the aesthetic nature of the affected area would be expected because of the proposed project. The proposed land-trade acquisition would trade a 1.07-acre parcel, with little to no recreational or wildlife habitat value, for a 2.61-acre parcel containing excellent wildlife habitat. Neither land parcel would be physically changed by the proposed action. Therefore, no impacts to the aesthetic nature the affected property would be expected because of the proposed project.
Air quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to air quality would be expected because of the proposed project. Air quality in the area affected by the proposed project is currently unclassifiable or in compliance with applicable National and Montana ambient air quality standards (NAAQS/MAAQS) The proposed project would replace a 1.07-acre parcel of land with a 2.61-acre parcel of land. No physical changes to the area affected by the proposed

									project would occur; therefore, no air quality impacts would be expected because of the proposed project.
Unique, endangered, fragile, or limited environmental resources	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to any unique, endangered, fragile, or limited environmental resources would be expected because of the proposed project. The potential for animal Species of Concern and Threatened or Endangered species to occur within the affected area was assessed using Montana Natural Heritage Program data. Both the proposed trade parcels are within the range of the Endangered Whooping Crane (<i>Grus americana</i>), as well as six state Species of Concern: Eastern Red Bat (<i>Lasiurus borealis</i>), Hoary Bat (<i>Lasiurus cinereus</i>), Little Brown Myotis (<i>Myotis lucifugus</i>), Least Tern (<i>Sternula antillarum</i>), Snapping Turtle (<i>Chelydra serpentina</i>), and Spiny Softshell (<i>Apalone spinifera</i>). However, none of these species have been observed in the affected area. FWP is not aware of other unique, endangered, fragile, or limited environmental resources in the affected area. When completed, the proposed project is expected to protect better-quality wildlife habitat for affected game and nongame species. Therefore, any impacts to unique, endangered, fragile, or limited environmental resources that may be located within or near the affected area would be long-term, beneficial, and negligible.
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to historic and archaeological sites would be expected because of the proposed project. The proposed action would transfer ownership of a 1.07-acre property containing an old farmstead which may be classified as an historic site; however, in transferring ownership of the affected property FWP would relinquish their property rights back to the former private landowner and would not undertake any further action on the site. In keeping with the Montana Antiquities Act and related regulations (ARM 12.8.501-12.8.510), all undertakings on state lands are assessed by a qualified archaeologist or historian for their potential to affect cultural resources. The process for this assessment may include a cultural resource inventory and

									<p>evaluation of cultural resources within or near the project area, in consultation with the State Historic Preservation Office. FWP also consults with all Tribal Historic Preservation Offices affiliated with each property in accordance with FWP's Tribal Consultation Guidelines. If cultural resources within or near the project area are recorded and are eligible for the National Register of Historic Places, they will be protected from adverse effects through adjustments to the project design or cancellation of the project if no design alternatives are available. If cultural resources are unexpectedly discovered during project implementation, FWP will cease implementation and contact FWP's Heritage Program for further evaluation. The proposed project would not result in any physical changes to the affected area. Because no ground disturbance or impacts to existing structures would occur, no impacts to historical or archaeological sites that may be located on the affected property would be expected because of the proposed project.</p>
<p>Demands on environmental resources of land, water, air, and energy</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>No significant adverse impacts to demands on the environmental resources of land, water, air, and energy would be expected because of the proposed project. The proposed land-trade acquisition would replace a 1.07-acre parcel, with little to no recreational or wildlife habitat value, with a 2.61-acre parcel containing excellent wildlife habitat thereby enhancing the vegetation and associated habitat value of the affected property and the adjacent WMA for wildlife. Because FWP would trade a smaller property with limited habitat value for a larger property with higher habitat value, overall impacts on the environmental resource of land would be long-term, beneficial, and negligible. Because no impacts to water and air resources would be expected because of the proposed project (see respective analyses above under Water Quality, Quantity and Distribution, and Air Quality), no impacts to the environmental resources of air and water would be expected because of the proposed project.</p>

Table 5 - Potential Impacts of Alternative 2: Proposed Project on the Human Population

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Social structures and mores	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impacts to social structures and mores in the affected area would be expected because of the proposed project. The proposed land-trade acquisition would trade a 1.07-acre parcel, with little to no recreational or wildlife habitat value, with a 2.61-acre parcel containing higher quality wildlife habitat thereby enhancing the habitat value of the affected property and the adjacent WMA for wildlife. Montanan's, and those that visit Montana for travel, leisure, and other recreational purposes, generally hold high regard for outdoor recreational opportunities, wildlife, and wildlife habitat. Therefore, because FWP would trade a smaller property with low recreational value for a larger property with higher recreational value, overall impacts to pre-project social structures, customs, values, and conventions in the affected area would be long-term, beneficial, and negligible.
Cultural uniqueness and diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impacts to cultural uniqueness and diversity in the affected area would be expected because of the proposed project. The proposed action would trade a 1.07-acre parcel for a 2.61-acre parcel, and it is not expected this action would result in any relocation of people into or out of the affected area. Therefore, no impacts to the existing cultural uniqueness and diversity of the affected area would be expected because of the proposed project.
Access to and quality of recreational and wilderness activities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impact would occur because of the proposed project. No Wilderness areas currently exist in the affected area; therefore, no impacts to Wilderness recreation activities would occur because of the proposed project. The proposed land trade would provide a slight

									increase in public recreational opportunity. No closures of public lands in the affected area, including the newly acquired 2.61-acre public parcel, would occur because of the proposed project. Therefore, any impacts to access and quality of recreational and wilderness activities would be long-term, beneficial, and negligible.
Local and state tax base and tax revenues	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the local and state tax base and tax revenue would be expected because of the proposed project. FWP is not exempt from paying property taxes; therefore, if the proposed land trade is approved, FWP would be subject to the existing tax burden associated with the newly acquired 2.61 -acre parcel and the affected landowner would take on the tax burden associated with the 1.07-acre parcel. No other potential impacts to the local and state tax base and tax revenue have been identified. Therefore, no impacts to the local and state tax base and tax revenue would be expected because of the proposed project.
Agricultural or Industrial production	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impacts to agricultural or industrial production in the affected area would be expected because of the proposed project. The proposed land-trade acquisition would replace a 1.07-acre parcel with a 2.61-acre parcel and neither the proposed acquisition nor the proposed disposition currently support any industrial or agricultural production. Because the affected area is not currently used for agricultural and/or industrial production the proposed project would not impact such practices. Therefore, no impacts to agricultural or industrial production would be expected because of the proposed project.
Human health and safety	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impacts to human health and safety would be expected because of the proposed project. The proposed land-trade acquisition would replace a 1.07-acre parcel with a 2.61-acre parcel of land. No human field-activity would be required or occur because of the proposed project and neither land parcel would be physically changed by the proposed action. Therefore, no

									impacts to human health and safety would be expected because of the proposed project.
Quantity and distribution of employment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the quantity and distribution of employment in the affected area would be expected because of the proposed project. The proposed land-trade acquisition would replace a 1.07-acre parcel with a 2.61-acre parcel of land. No human field-activity would be required or occur because of the proposed project and neither land parcel would be physically changed by the proposed action. Therefore, no influx or efflux of employment to the affected area would be expected because of the proposed project.
Distribution and density of population and housing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the distribution and density of population and housing would be expected because of the proposed project. Under the proposed land-trade, ownership of the affected 1.07-acre parcel with the existing trailer and tenant would be transferred back to the former landowner and eviction of the current tenant from the property would not be required. No other housing would be impacted by the proposed action. Therefore, no impacts to the distribution and density of population and housing in the area affected by the proposed project would be expected because of the proposed project.
Demands for government services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the demands for government services in the affected area would be expected because of the proposed project. The proposed land-trade acquisition would trade a 1.07-acre parcel with a 2.61-acre parcel of land. Accommodation of the land trade would require a negligible amount of government resources and, when completed, would not further impact demands for government services. The proposed project would use existing government staff to accomplish the land trade and no additional demands for government services would be expected because of the proposed project. Any impacts to the demand for government services would be short-term and negligible.

Industrial, agricultural, and commercial activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to industrial, agricultural, and commercial activity would be expected because of the proposed project. The proposed land-trade acquisition would trade a 1.07-acre parcel with a 2.61-acre parcel of land. Neither of the affected parcels of land currently accommodate industrial, agricultural, or commercial activity. Therefore, no impacts to industrial, agricultural, or commercial activity would be expected because of the proposed project.
Locally adopted environmental plans and goals	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to locally adopted environmental plans and goals would be expected because of the proposed project. The proposed land-trade acquisition would trade a 1.07-acre parcel, with little to no recreational or wildlife habitat value, with a 2.61-acre parcel containing excellent wildlife habitat. Wildlife and habitat conservation constitute a primary goal of the existing WMA. The proposed project would protect the excellent wildlife habitat associated with the 2.61-acre parcel and thereby further a primary goal of the adjacent WMA. FWP is unaware of any other locally adopted environmental plans or goals that may be impacted by the proposed project. Therefore, any impacts to locally adopted environmental plans and goals would be long-term, beneficial, and minor.
Other appropriate social and economic circumstances	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to any other appropriate social and economic circumstances would be expected because of the proposed project. FWP is unaware of any other appropriate social and economic circumstances that may be impacted by the proposed project. Therefore, no significant adverse impacts to other appropriate social and economic circumstances would be expected because of the proposed project.

Table 6: Determining the Significance of Impacts on the Quality of the Human Environment

If the EA identifies impacts associated with the proposed project FWP must determine the significance of the impacts. ARM 12.2.431. This determination forms the basis for FWP's decision as to whether it is necessary to prepare an environmental impact statement.

According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.

Criteria Used to Determine Significance

1	<p>The severity, duration, geographic extent, and frequency of the occurrence of the impact</p> <p>“Severity” describes the density of the potential impact, while “extent” describes the area where the impact will likely occur, e.g., a project may propagate ten noxious weeds on a surface area of 1 square foot. Here, the impact may be high in severity, but over a low extent. In contrast, if ten noxious weeds were distributed over ten acres, there may be low severity over a larger extent.</p> <p>“Duration” describes the time period during which an impact may occur, while “frequency” describes how often the impact may occur, e.g., an operation that uses lights to mine at night may have frequent lighting impacts during one season (duration).</p>
2	The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur
3	Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts
4	The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values
5	The importance to the state and to society of each environmental resource or value that would be affected
6	Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions
7	Potential conflict with local, state, or federal laws, requirements, or formal plans

VIII. Private Property Impact Analysis (Takings)

The 54th Montana Legislature enacted the Private Property Assessment Act, now found at § 2-10-101. The intent was to establish an orderly and consistent process by which state agencies evaluate their proposed projects under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency projects pertaining to land or water management or to some other environmental matter that, if adopted and enforced without due process of law and just compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agencies to assess the impact of a proposed agency project on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency project has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act.

Table 7: Private Property Assessment (Takings)

	Yes	No	
<i>Is FWP regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Does FWP have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>If so, FWP must determine if there are alternatives that would reduce, minimize, or eliminate the restriction on the use of private property, and analyze such alternatives. Have alternatives been considered and/or analyzed? If so, describe below:</i>	<input type="checkbox"/>	<input type="checkbox"/>	
PRIVATE PROPERTY ASSESMENT ACT (PPAA)			
Does the Proposed Action Have Takings Implications under the PPAA?	Question #	Yes	No
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action deprive the owner of all economically viable uses of the property?	3	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 4a and 4b and continue with question 5)	4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input type="checkbox"/>
Does the action deny a fundamental attribute of ownership?	5	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Does the action have a severe impact of the value of the property?	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the impact of government action direct, peculiar, and significant?	7a	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	<input type="checkbox"/>	<input type="checkbox"/>
Does the proposed action result in taking or damaging implications?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Taking or damaging implications exist if YES is checked in response to Question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to question 4a or 4b.			
If taking or damaging implications exist, the agency must comply with MCA § 2-10-105 of the PPAA, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.			
Alternatives: The analysis under the Private Property Assessment Act, §§ 2-10-101 through -112, MCA, indicates no impact. FWP does not plan to impose conditions that would restrict the regulated person's use of private property to constitute a taking.			

IX. Public Participation

The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. FWP is responsible for adjusting public review to match these factors (ARM 12.2.433(1)). Because FWP determines the proposed action will result in limited environmental impact, and little public interest has been expressed, FWP determines the following public notice strategy will provide an appropriate level of public review:

- An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to FWP. If the document is out-of-print, a copying charge may be levied (ARM 12.2.433(2)).
- Public notice will be served on the Montana Fish, Wildlife and Parks website at:
<https://fwp.mt.gov/news/public-notice>
- Copies will be distributed to neighboring landowners to ensure their knowledge of the proposed project and opportunity for review and comment on the proposed action.
- FWP maintains a mailing list of persons interested in a particular action or type of action. FWP will notify all interested persons and distribute copies of the EA to those persons for review and comment (ARM 12.2.433(3)).
- FWP will issue public notice in the following newspaper periodical(s) on the date(s) indicated.

Newspaper / Periodical	Date(s) Public Notice Issued
Sidney Herald	5/17/23
Glendive Ranger Review	5/17/23

- Public notice will announce the availability of the EA, summarize its content, and solicit public comment.
 - **Duration of Public Comment Period:** The public comment period begins on the date of publication of legal notice in area newspapers (see above). Written or e-mailed comments will be accepted until 5:00 p.m., MST, on the last day of public comment, as listed below:

Length of Public Comment Period: 15 days

Public Comment Period Begins: 05/17/2023

Public Comment Period Ends: 05/31/2023

Comments must be addressed to the FWP contact, as listed below.

○ **Where to Mail or Email Comments on the Draft EA:**

Name: MELISSA FOSTER

Email: mfoster@mt.gov

Mailing Address:

FWP Region 7 – Elk Island WMA Land Trade

PO Box 1630

Miles City, MT 59301

X. Recommendation for Further Environmental Analysis

NO further analysis is needed for the proposed action	<input checked="" type="checkbox"/>
FWP must conduct EIS level review for the proposed action	<input type="checkbox"/>

XI. EA Preparation and Review

	Name	Title
EA prepared by:	Melissa Foster	Wildlife Biologist
EA reviewed by:	Eric Merchant	MEPA Coordinator